

**ASSEMBLY BILL**

**No. 1990**

**Introduced by Assembly Member Campbell**

February 13, 2004

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An act to amend Section 16461 of the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1990, as introduced, Campbell. Trusts: trustee liability.

Existing law provides that a provision in a trust can relieve a trustee of liability for breach of trust, with specified exceptions for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or for any profit that the trustee derives from a breach of trust.

This bill would provide that a provision in a trust relieving a trustee of liability if a beneficiary fails to object to an item in an interim or final account or other written report within a specified time period would be effective only if certain conditions were met, including the provision of a specified notice and a period within which a beneficiary may object of not less than 120 days. Among other things, the bill would prohibit a beneficiary who fails to object in writing to an account or report that complies with these requirements from asserting any claim against the trustee regarding an item that is adequately disclosed in the account or report, with specified exceptions. The bill would provide that, if proper notice has been given, and if a beneficiary has not made a timely objection, the trustee is not liable for any other claims adequately disclosed by any item in the account or report.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 16461 of the Probate Code is amended to read:

16461. (a) Except as provided in subdivision (b), (c), or (d), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

(b) A provision in the trust instrument is not effective to relieve the trustee of liability (1) for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or (2) for any profit that the trustee derives from a breach of trust.

(c) A provision in a trust instrument that releases the trustee from liability if a beneficiary fails to object to an item in an interim or final account or other written report within a specified time period is effective only if all of the following conditions are met:

(1) The account or report sets forth the item.

(2) The period specified in the trust instrument for the beneficiary to object is not less than 120 days, or the trustee elects to follow the procedure provided in subdivision (d).

(3) Written notice in 12-point boldface type is provided to a beneficiary with the account or report in the following form:

**NOTICE TO BENEFICIARIES**

**YOU HAVE [insert period specified in trust instrument or subdivision (d)] FROM YOUR RECEIPT OF THIS ACCOUNT OR REPORT TO MAKE AN OBJECTION TO ANY ITEM SET FORTH IN THIS ACCOUNT OR REPORT. ANY OBJECTION YOU MAKE MUST BE IN WRITING; IT MUST BE DELIVERED TO THE TRUSTEE WITHIN THE PERIOD STATED ABOVE; AND IT MUST STATE YOUR OBJECTION. YOUR FAILURE TO DELIVER A WRITTEN OBJECTION TO THE TRUSTEE WITHIN THE PERIOD STATED ABOVE WILL PERMANENTLY PREVENT YOU FROM LATER ASSERTING THIS OBJECTION AGAINST THE TRUSTEE. IF YOU DO MAKE AN OBJECTION TO THE TRUSTEE, THE THREE-YEAR PERIOD PROVIDED IN SECTION 16460 OF THE PROBATE CODE FOR COMMENCEMENT OF LITIGATION WILL APPLY TO**

1 CLAIMS BASED ON YOUR OBJECTION.

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3 (d) A provision in a trust instrument that provides for a period  
4 less than 120 days to object to an item in an account or report shall  
5 be ineffective to release the trustee from liability. A trustee of a trust  
6 created by an instrument with an ineffective period may elect to be  
7 governed by the provisions of subdivision (c) by complying with the  
8 requirements of subdivision (c), except that “120 days” shall be  
9 substituted in the notice form for the ineffective period.

10 (e) A beneficiary who fails to object in writing to an account or  
11 report that complies with the requirements of subdivision (c) within  
12 the specified, valid period shall be barred from asserting any claim  
13 against the trustee regarding an item that is adequately disclosed  
14 in the account or report, subject to the provisions of subdivision (b)

15 (f) Except as provided in subdivision (a) of Section 16460, the  
16 trustee may not be released from liability as to any claim based on  
17 a written objections made by a beneficiary if the objection is  
18 delivered to the trustee within the specified, effective period.

19 (g) Compliance with subdivision (g) excuses compliance with  
20 paragraph (6) of subdivision (a) of Section 16063 for the account  
21 or report to which that notice relates.

22 (h) If proper notice has been given and a beneficiary has not  
23 made a timely objection, the trustee is not liable for any other  
24 claims adequately disclosed by any item in the account or report.

25 (i) Subdivisions (c) to (h), inclusive, apply to all accounts and  
26 reports submitted after the effective date of the act adding these  
27 subdivisions.